

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2022 SEP 14 PM 2:37 2022 SEP

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BY

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BRUCE and NANCY KELLEY, )

Plaintiffs, )

v. )

Case No. 5:21-cv-278

FRANKLIN COUNTY REHAB CENTER, )

LLC, FRANKLIN COUNTY )

REHABILITATION CENTER, FRANKLIN )

COUNTY REHABILITATION & ADULT )

CARE CENTER, TEIG MARCO, )

NORTHERN TIER COMMUNITY )

HEALTH, NORTHERN TIER CENTER )

FOR HEALTH, THE RICHFORD )

HEALTH CENTER, INC., KRISTY )

JANKOWSKI, MARION PERRY, KYLA )

APLEY, STEPHEN RANNEY, and )

ANDREW STANLEY )

Defendants. )

**ORDER**

One of the jurisdictional issues in this case is whether the crossclaim by Franklin County Rehab. Ctr. against Dr. Marco for failing to include FCRC as an additional insured as well as for indemnity is subject to the FTCA. See *Zanghi v. Sisters of Charity Hosp. of Buffalo*, 2013 WL 706241 (W.D.N.Y Feb. 26, 2013). The issue matters because if the court dismisses the malpractice claim against Dr. Marco for failure to exhaust the administrative presentment requirement, there is no basis for federal jurisdiction over the remaining malpractice defendants. Plaintiffs have requested that the court deem Dr. Marco to be a federal employee for purposes of the crossclaim brought by FCRC. See Doc. 62, p. 8. It would be helpful if counsel can come to the hearing later this week prepared to address this issue and the related issue of whether the

federal court should exercise supplemental jurisdiction over the other malpractice defendants if the indemnity claim continues to provide a basis for federal question jurisdiction.

Dated at Rutland, in the District of Vermont, this 14<sup>th</sup> day of September, 2022.

A handwritten signature in black ink, appearing to read 'G. W. Crawford', written over a horizontal line.

Geoffrey W. Crawford, Chief Judge  
United States District Court